

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEAGUE OF WOMEN VOTERS OF
MICHIGAN, ROGER J. BRDAK,
FREDERICK C. DURHAL, JR., JACK E.
ELLIS, DONNA E. FARRIS, WILLIAM
"BILL" J. GRASHA, ROSA L. Case No. 17-CV-14148
HOLLIDAY, DIANA L. KETOLA, JON
"JACK" G. LASALLE, RICHARD "DICK" Hon. Eric L. Clay
W. LONG, LORENZO RIVERA and Hon. Denise Page Hood
RASHIDA H. TLAIB, Hon. Gordon J. Quist

Plaintiffs,

-vs-

RUTH JOHNSON, in her official
capacity as Michigan Secretary of
State,

Defendant.

Deposition of KENNETH R. MAYER, Ph.D.,
taken at the instance of the Defendant, under and
pursuant to the Federal Rules of Civil Procedure, before
Tammy L. Uh1, RPR, CRR, CRC, a Notary Public in and for
the State of Wisconsin, at Quarles & Brady LLP,
33 East Main Street, Suite 900, Madison, Wisconsin, on
August 1, 2018, commencing at 9:27 a.m. and concluding at
3:40 p.m.

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1 A P P E A R A N C E S
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3 FAEGRE BAKER DANIELS LLP, by
4 MR. JOSEPH H. YEAGER, JR. and MR. KEVIN M. TONER,
5 300 N. Meridian Street, Suite 2700,
Indianapolis, Indiana 46204-1750,
6 appeared on behalf of the Plaintiffs.

7 JONES DAY, by
8 MR. MICHAEL A. CARVIN,
51 Louisiana Avenue, N.W.,
Washington, D.C. 20001-2113,
appeared on behalf of the Defendant.

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1 I N D E X
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3	Examination:	Page
4	By Mr. Carvin	4
5	Exhibits Identified:	Page
6	1 Evaluation of Michigan Congressional and	5
7	State Legislative District Plans by	
7	Kenneth R. Mayer, Ph.D., dated June 1, 2018	
8	2 <i>The University of Chicago Law Review</i>	119
9	article titled <i>Partisan Gerrymandering and</i>	
9	<i>the Efficiency Gap</i>	
10		
11	Requests:	Page
12	1 Files sent from Professor Chen to Professor	159
13	Mayer	
14		
15	(The original exhibits were attached to the original	
16	transcript and PDFs were provided to counsel)	
17		
18	(The original transcript was filed with	
18	Attorney Peter H. Ellsworth)	
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EXAMINATION

09:27AM 5 BY MR. CARVIN:

6 Q Good morning, Professor Mayer.

7 A Good morning.

8 Q Have you had your deposition taken before?

9 A Yes.

09:27AM 10 | Q How many times?

11 A Probably ten.

12 Q And has that always been in an expert witness
13 capacity?

14 A Yes.

09:27AM 15 Q Okay. So you know how this works. I'll just go
16 through a couple of preliminaries. You're not
17 under any medication or any other reason that you
18 can't testify fully and truthfully today; is that
19 correct?

09:27AM 20 A That's correct.

21 Q And because the court reporter -- I'm going to
22 need verbal responses from you, either yes or no,
23 rather than nodding your head. Do you understand
24 that?

09:27AM 25 | A I understand.

1 number in a specific article.

2 Q No. Just specific number generally?

3 MR. YAAGER: Objection. Vague and
4 ambiguous.

10:22AM 5 A I mean, I can't tell you specifically whether the
6 advantage is 4.5 or 5.3, but it is positive. It
7 is correct to say that incumbents -- I would say
8 not usually. They almost always win when they run
9 for reelection.

10:23AM 10 Q And competitive districts are generally viewed as
11 beneficial?

12 A That depends on who you ask.

13 Q I'm asking your opinion.

14 A I think generally speaking a district that is
15 competitive, those are generally considered to be
16 normatively good things.

17 Q All right. Let's turn to that specific issue, I
18 guess, at this point. If you could turn to page 9
19 of your report. I'm going to start reading. This
20 is the second -- third full paragraph on page 9.

21 *The primary effect of gerrymandering is that*
22 *it violates both principles. It disrupts the*
23 *relationship between the number of votes a party*
24 *receives and the number of seats it wins, and*
25 *violates the core democratic principle that the*

1 A I think that's incorrect. As we've talked about
2 before, the baseline gives you the starting point.
3 Q Right. And now I'm asking you about the end
4 point. In the real word, have you made any
5 predictions or done any analysis with any of these
6 standard errors of measure about how many seats
7 democrats are likely to win in the 2018 or 2020
8 elections in the state house anywhere in your
9 report?

11:51AM 10 A In terms of a forecast, specific forecast of
11 district level outcomes, no.

12 Q Okay. And in terms of a general forecast for
13 statewide voting, you haven't made a prediction
14 with a standard error of measure about what their
15 statewide voting percentage will be in the state
16 house elections in 2018 or 2020; is that correct?

17 A That's correct.

18 Q And the answer is the same for both state senate
19 and congress?

11:52AM 20 A That's correct.

21 Q So you're saying it's widely accepted in the
22 political science community not to use endogenous
23 races to assess or predict elections outcomes?

24 A Again, it depends. When I was using the term,
25 again, my recollection is that it was a

02:38PM

1 right?

2 A That's the conclusion, yes.

3 Q And that's the correct conclusion. And the reason
4 is pretty obvious, isn't it? Do you know what the
5 efficiency gap is for a 51-49 district? Haven't
6 you wasted 49 votes if you lose 51-49?

7 MR. YAEGER: Objection.

8 Q And you only wasted 1 percent of votes if you --

02:39PM

9 A So the efficiency gap is not calculated for a
10 single district. The efficiency gap is calculated
11 for a plan.

12 Q Maybe we can answer the question. What would the
13 efficiency gap be for a 51 to 49 district?

14 A Well, the number --

02:39PM

15 MR. YAEGER: I object to your
16 characterization. He did answer the
17 question. I'm going to object that the
18 question makes no sense as he's explained.
19 You may answer.

02:39PM

20 A So the number of wasted votes would change from
21 essentially 1 to 49.

22 Q So it would be a 48 percent efficiency gap. A
23 huge efficiency gap for that district?

24 A An efficiency gap is not calculated for a single
25 district. An efficiency gap is calculated for a

1 STATE OF WISCONSIN)
2) ss.
COUNTY OF DANE)

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4 I, Tammy L. Uhl, Certified Realtime Reporter
5 and Notary Public in and for the State of Wisconsin,
6 do hereby certify that the foregoing deposition of
7 KENNETH R. MAYER, Ph.D. was taken before me on
8 August 1, 2018, and reduced to writing by me, a
9 professional court reporter and disinterested person,
10 approved by all parties in interest and thereafter
11 converted to typewriting using computer-aided
12 transcription.

13 I further certify that I am not related to nor
14 an employee of counsel or any of the parties to the
15 action, nor am I in any way financially interested in
16 the outcome of this case.

17 IN WITNESS WHEREOF, I have hereunto set my hand
18 and affixed my notarial seal of office at Madison,
19 Wisconsin, this 2nd day of August, 2018.

20 *Tammy L. Uhl*
21

22 _____
23 Notary Public, State of Wisconsin
24 My Commission Expires 8/18/2020
25

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Digitally signed by Sarah Pichette, Notary Public -
Commission Expires 6/14/19
DN: serialNumber=04q67488mf572spt, c=US,
st=Wisconsin, l=Waunakee, o=For the Record, Inc.,
cn=Sarah Pichette, Notary Public - Commission
Expires 6/14/19
Date: 2018.08.02 19:14:02 -05'00'

Sarah Pichette